

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Denise M. Larkin a/k/a
Denise Manzano,

Case No. 01-13551
Chapter 13

Debtor.

APPEARANCES:

Rodriguez & Doern, P.C.
Attorneys for the Debtor
4 Franklin Square, Suite G
Saratoga Springs, New York 12866

James E. D. Doern, Esq.
Of Counsel

Meggesto, Crossett & Valerino, LLP.
Attorneys for Creditor Manzano
313 E. Willow Street, Suite 201
Syracuse, New York 13203

William Drexler, Esq.
Of Counsel

Crane, Green & Parente
Local Counsel for Creditor Manzano
90 State Street
Albany, New York 12207

Peter A. Lauricella, Esq.
Of Counsel

Andrea E. Celli, Esq.
Chapter 13 Standing Trustee
350 Northern Boulevard
Albany, New York 12204

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

Memorandum, Decision & Order

Before the court is an objection by Denise Larkin (“Debtor”) to the claim of Manuel F. Manzano, individually and as executor of the Estate of Manuel C. Manzano (“Creditor”). The court has core jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (B) and 1334(b).

Facts

The facts are not contested and based upon the pleadings and the docket, the court finds the following:

On April 14, 1998, the Creditor filed a complaint against the Debtor in the Nevada District Court. The complaint alleged, *inter alia*, fraud, unjust enrichment and breach of contract and requested approximately \$85,000.00 in damages. The complaint was personally served on the Debtor, in New York, on May 5, 1998.

Prior to March 1998, the Debtor retained Peter McLellan, Esq. to represent her. However, neither he nor the Debtor provided an answer to the complaint. As a consequence of the failure to answer, on July 13, 1998, a default judgment in the amount of \$84,941.30 was issued by the Nevada District Court against the Debtor (the “Nevada judgment”).

Thereafter, the Creditor sought to enforce the Nevada judgment in the New York State Supreme Court, moving for summary judgment in lieu of complaint pursuant to New York CPLR § 3213. The Debtor opposed the motion arguing that the Nevada District Court lacked jurisdiction to render the judgment. After an analysis of the arguments, by written decision, the New York court disagreed with the Debtor and granted summary judgment on behalf of the Creditor. The Debtor did not appeal that decision and, on December 21, 1998, the New York State judgment was entered.

On May 29, 2001, the Debtor filed a voluntary Chapter 13 petition. On August 31, 2001, the Creditor filed a proof of claim for \$113,970.41 (i.e., the Nevada judgment amount plus interest). Thereafter, several competing motions and hearings were held, resulting in a brief written decision by this court dated January 22, 2002. Pursuant to that decision, the parties were

directed to make written submissions on the objection to claim. Both parties timely complied.

Argument

The Debtor argues that because the Nevada judgment, the basis of the Creditor's claim, was obtained by default, she had no opportunity to litigate the issues even though she had a valid defense. She urges the court to invoke its equitable power to disregard the Nevada judgment and determine the validity of the claim. The Creditor has a different point of view. He argues that pursuant to controlling case law, the bankruptcy court is bound to give full faith and credit to the Nevada judgment as accepted by the New York State court.

Discussion

Article IV § 1 of the United States Constitution,¹ requires states to recognize and give “full faith and credit” to the judicial proceedings, including judgments, of other states. 28 U.S.C. § 1738,² and the leading case in this circuit, *Kelleran v. Andrijevic*, 825 F.2d 692 (2d. Cir. 1987), requires federal courts, except under limited circumstances, to do the same. It is against this backdrop that the Debtor asks the court to “look behind” the Nevada judgment which was adopted by the New York court.

In support of her assertion, the Debtor points to several historic decisions including, *Pepper v. Litton*, 308 U.S. 295 (1939), and *Margolis v. Nazareth Fair Ground & Farmers*

¹This section states, in part:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every state.

²This section states, in part:

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Market, Inc., 249 F.2d 221 (2d Cir. 1957). In *Pepper v. Litton*, the court found that the defendant had engaged in a “deliberate and carefully planned attempt” to avoid the payment of a legitimate debt of the creditor. *Pepper v. Litton*, 308 U.S. at 242. The Court further determined that the claim the defendant used to assert his own demand for payment did not represent an “honest debt.” *Id.* Finally, the Court found that the defendant failed to demonstrate that the claims in question had been previously litigated, and therefore, they were not entitled to *res judicata* treatment. *Id.* at 243. Under these circumstances, the Court approved the bankruptcy court’s disallowance of the defendant’s claim. *Id.* at 310.

In *Margolis v. Nazareth Fair Ground & Farmers Market, Inc.*, the Second Circuit relying on *Pepper v. Litton* determined that where it appears a judgment is procured by fraud, a bankruptcy court may exercise its equitable power to review the judgment in the claims allowance context. *Id.* at 224. Finally, the Debtor relies upon *In re Lockwood*, 14 B.R. 374 (Bankr. E.D.N.Y. 1981), where the bankruptcy court subordinated a claim after finding that the state court judgment, the basis of the claim, was not based upon a valid debt.³

The court does not disagree with the result in those cases. However, the present case is factually distinguishable. There has been no allegation or any facts presented which would support a finding that the Creditor’s judgment was obtained by fraud or in an inequitable manner. Rather, the Debtor, on the advice of counsel, failed to answer the allegations in the Nevada District Court and a default judgment was granted.

³The Debtor cites *Lockwood* for the proposition that a bankruptcy court may look behind a default judgment if it is granted due to the incompetence of counsel. However, she does not raise the interesting question of whether the claim may be subordinated as opposed to disallowed.

Moreover, and more importantly, the cases relied on by the Debtor pre-date *Kelleran v. Andrijevic*. The issue in *Kelleran* was whether the bankruptcy court's equitable powers could be invoked to "[d]isregard the preclusive effect of a state court default judgment" when there was no allegation that the judgment was obtained by fraud or collusion but where the bankruptcy court found the claim to be "wholly without merit." *Id.* at 693. Relying upon 28 U.S.C. § 1738 and *Allen v. McCurry*, 449 U.S. 90 (1980), the Second Circuit determined the bankruptcy court could not disregard the creditor's claim. In so holding, the court stated,

Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the state from which the judgments emerged would do so. (citations omitted.) Bankruptcy courts fall with Congress' mandate. (citation omitted.) The bankruptcy court, therefore, was bound to give preclusive effect to the default judgment obtained in the state court ... to the same extent as would a New York court. *Id.*

Thus, the Circuit's most recent directive is clear.

The debtor in *Kelleran* based its arguments on *Margolis*. The Circuit found that reliance misplaced, stating, "*Margolis* and its progeny speak only to the bankruptcy court's broad equitable power to remedy fraudulent *procurement* of default judgments. The *Margolis* line does not alter section 1738's requirement that bankruptcy courts respect lawfully obtained state court judgments." *Id.* at 694. (emphasis in original.)

The *Kelleran* court explained the limited circumstances under which a bankruptcy court may disregard a state court judgment, asserting, "[b]ankruptcy courts may look beyond a state court default judgment where the judgment was procured by collusion or fraud or where the rendering court lacked jurisdiction." *Id.* (citations omitted). However, it cautioned, "[b]ankruptcy proceedings may not be used to re-litigate issues already resolved in a court of competent jurisdiction." *Id.* (citations omitted).

As previously noted, there is no allegation that the Creditor's judgment was obtained by fraud or collusion. Rather, the Debtor asserts that her previous attorney advised her not to answer the complaint in the Nevada District Court because the judgment would be meaningless and would not be adopted in New York. He was wrong. At the hearing for summary judgment, the New York court found that the Nevada court had proper jurisdiction to render the default judgment, and therefore, granted summary judgment in New York. The New York court's determination is crucial in this matter because in New York the granting of summary judgment is a decision on the merits and entitled to *res judicata* treatment. *Eiderberg v. Zellermayer*, 5 A.D.2d 658 (1st Dept. 1958) aff'd 6 N.Y.2d 815 (1959).

Pursuant to *Kelleran*, this court is bound to give the New York judgment the same preclusive effect that a New York court would and because that court decided the issue on the merits, this court will not re-litigate it. The Debtor's objection to the Creditor's claim is overruled.

Finally, the Debtor contends that even if the court allows the claim it should hold a hearing to determine the amount of the claim; she cites *Kelleran*. The difference is apparent; in *Kelleran* there had been no determination of damages. Here, the damages were properly requested and a default judgment taken. Based upon the judgment, the Creditor timely filed a proof of claim indicating that as of August 31, 2001, he was owed \$113,970.41. Pursuant to Bankruptcy Rule 3001, the timely filing of a properly executed proof of claim is prima facie evidence of the validity of the claim. Fed. R. Bankr. P. 3001(f). In both the Nevada and New York court, the Debtor failed to come forward with any evidence suggesting the amount of the claim was inappropriate. To allow her, at this time and based upon mere accusations, to contest

the amount of this claim would be inappropriate and contrary to established law.

Conclusion

For these reasons, the Debtor's objection to the Creditor's claim is overruled.

Dated:
Albany, New York

Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge

